

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IPCOM GMBH & CO. KG,

Plaintiff,

vs.

APPLE INC.,

Defendant.

CASE NO. 5:14-mc-80037-EJD-PSG

STIPULATION AND ~~PROPOSED~~  
PROTECTIVE ORDER

On April 10, 2014, the Court issued its Order pursuant to 28 U.S.C. § 1782 granting ICom GmbH & Co. KG (“ICom”) leave to obtain discovery from Apple Inc. (“Apple”) for use in foreign proceedings. On April 11, 2014, ICom served Apple with a subpoena identifying the documents it seeks for use in those foreign proceedings. Apple filed a motion to quash that subpoena, but after full briefing by the parties, the Court issued an Order on July 28, 2014 denying Apple’s motion to quash and ordering Apple to produce the requested documents no later than August 27, 2014. The Court also ordered the parties to submit a proposed protective order by August 13, 2014.

Whereas, Apple wishes to protect the confidential, proprietary, and/or commercially sensitive information of certain documents sought by ICom;

1 Apple and IPCom hereby stipulate and agree as follows:

2  
3 The Court hereby orders that Apple may, in good faith, designate material produced in  
4 response to this subpoena that is confidential, proprietary, and/or commercially sensitive  
5 information marked as "CONFIDENTIAL." Once produced and so designated, or if no  
6 designation is necessary, Apple may use these documents in the foreign proceedings to the same  
7 extent as IPCom.

8 The following protections shall apply to information produced by Apple pursuant to the  
9 subpoena at issue marked CONFIDENTIAL:

10 1. IPCom's in-house counsel and other IPCom personnel shall not be permitted access  
11 to confidential information;

12 2. IPCom shall not permit access to the confidential information by anyone except:

13 (a) German court personnel;

14 (b) Qualified Retained Experts as defined below; and

15 (c) IPCom outside counsel who (1) do not have any financial interest in IPCom, (2) do not  
16 represent IPCom in any licensing negotiations, (3) have agreed in writing to be bound to the terms  
17 of this protective order, and (4) who need to see this Apple confidential information for purposes  
18 of putting on IPCom's claims or defenses in any German litigation(s);

19 3. "Qualified Retained Experts" as used above means retained experts who are  
20 qualified in advance with an opportunity for Apple to make reasonable objections within ten (10)  
21 calendar days after disclosure of any such expert. If, after meeting and conferring in good faith  
22 following such objection, the parties are unable to resolve the objection,

23 Apple shall have five (5) calendar days from the date of its objection in which to file a  
24 motion for a protective order with this Court, after which time it shall be deemed to have waived  
25 its objections. Each such qualified expert will agree in writing to be bound to the terms of this  
26 protective order and will only be given access if he or she needs to see Apple's confidential  
27 information for purposes of putting on IPCom's claims or defenses in any German litigation(s);  
28

1           4.       IPCom agrees to submit any written materials containing confidential information  
2 in a redacted form if reasonably feasible or, if redaction is not feasible, after designating these  
3 materials “Highly Confidential” and requesting the competent German court to exclude these  
4 materials from any third party access to the court files. IPCom further agrees to stipulate and  
5 move any applicable German court to close the courtroom during those portions of hearings when  
6 Apple’s confidential information is to be discussed. If the German court refuses to close the  
7 courtroom, IPCom may nevertheless make use of the Apple confidential information, but agrees to  
8 use its best efforts to ensure that Apple’s confidential information will not be made public,  
9 including, for example, referring to citations to the sealed written record and directing all  
10 witnesses to refer to citations to the written record. In any situation where Apple confidential  
11 information must be made public in a German court, IPCom will continue to use its best efforts to  
12 minimize the Apple confidential information that would in fact be made public, both in terms of  
13 quantity and the commercial sensitivity of such Apple confidential information;

14           5.       After receiving notice IPCom will promptly notify Apple and its counsel of any  
15 attempt by a third party to the German proceedings to access any such Apple confidential  
16 information that was in fact used in those proceedings, or of any attempt by any third party to  
17 intervene in the German proceedings, in sufficient time to allow Apple to object, with the  
18 cooperation of the parties in the proceeding, and to have such objection timely resolved by the  
19 German court to ensure adequate protections remain in place;

20           6.       After and to the extent IPCom receives notice, IPCom will object to any attempt by  
21 a third party to access any such Apple confidential information submitted to the court in the  
22 German proceedings; and

23           7.       IPCom will give Apple advance notice (at least 2 weeks where possible, and  
24 promptly where IPCom has less than 2 weeks notice) of any hearings at which its confidential  
25 information may be used and an opportunity to attend.  
26  
27  
28

1 DATED: August 13, 2014

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

4 By: /s/ Brian Cannon

Brian Cannon

Attorneys for IPCom

7 DATED: August 13, 2014

WILMER CUTLER PICKERING HALE AND DORR  
LLP

10 By: /s/ Mark Selwyn

Mark Selwyn

Attorneys for Apple

13 PURSUANT TO STIPULATION, IT IS SO ORDERED

16 DATED: August 22, 2014

18 By:



Hon. Paul S. Grewal

United States Magistrate Judge